ELLIOTT A. RIGGS

IBLA 82-140 Decided June 21, 1982

Appeal from decision of the California State Office, Bureau of Land Management, rejecting in part oil and gas lease offer CA 9052.

Reversed in part, affirmed in part, and remanded.

1. Oil and Gas Leases: Applications: Description -- Oil and Gas Leases: Description of Land -- Words and Phrases

"Smallest legal subdivision." In general, it is proper to reject an oil and gas lease offer to the extent that it includes a parcel of land smaller than the smallest legal subdivision, i.e., a quarter-quarter section, except where the offer is for a lot in a fractional section. However, an offer which describes land in parcels smaller than a quarter-quarter section may be accepted if it includes all of the land available for leasing within a quarter-quarter section.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Elliott A. Riggs has appealed from the October 20, 1981, decision of the California State Office, Bureau of Land Management (BLM), rejecting in part oil and gas lease offer CA 9052 with respect to those parcels described as aliquot parts of a quarter-quarter section. The reasons given for the rejection of these parcels was that the smallest legal subdivision which may be used to describe lands in an offer is a quarter-quarter section. The decision approved issuance of a lease for the remaining lands which were described as quarter-quarter sections or larger.

The tract for which appellant applied borders on land granted to the Metropolitan Water District of Southern California pursuant to the Act of June 18, 1932, Chapter 270, 47 Stat. 324 (1932). Appellant contends that any oil and gas deposits reserved to the United States that underlie this grant are not subject to leasing under the Mineral Leasing Act of 1920,

30 U.S.C. § 181, et seq. (1976), but only under the provisions of the Right-of-Way Leasing Act of 1930, 30 U.S.C. § 301-306 (1976), if at all. 1/ Because this land is unavailable, appellant contends that it is necessary to describe tracts less than the smallest legal subdivision in order to lease the land in each section that remains available. Appellant cites the Department's decision in Jacob N. Wasserman, 74 I.D. 392 (1967), as an example of the Department's approval of the practice of accepting offers for parcels of land less than 40 acres, provided that these aliquot portions are described in the same manner as larger subdivisions of a section. 2/ Appellant's argument has merit.

[1] In Gary E. Strong, 57 IBLA 306 (1981), we held that in general, the smallest legal subdivision which may be encompassed by an oil and gas lease offer is a quarter-quarter section (40 acres), unless the offer is for a lot in the fractional section. 3/ However, this rule should not preclude the issuance of a lease for smaller parcels. As the Department stated in Jacob N. Wasserman, supra at 394:

1/ In support of its contention that the land within the grant to the Metropolitan Water District is not available for leasing under the Mineral Leasing Act, appellant cites S. Rep. No. 801, 72nd Cong., 1st Sess. 2-3, in which the Solicitor describes the right to be acquired by the District as "in the nature of a base or qualified fee." Appellant cites Windsor Reservoir and Canal Co. v. Miller, 51 L.D. 27 (1925), rehearing denied, 51 L.D. 305 (1925), for the proposition that we have no authority to issue leases under the Mineral Leasing Act for land described as a base or limited fee.

2/ In Wasserman, supra, the only issue was the proper description for a parcel of land smaller than the smallest legal subdivision. Implicit in this decision is the correctness of applying for such a parcel, provided that it is properly described.

3/ In Strong, supra at 307, we offered the following authority for the proposition that the smallest legal subdivision is a quarter-quarter section:

"In the BLM Glossary of Public Land Terms (1949 Ed.), are found definitions of 'legal subdivision,' 'regular subdivision,' and 'smallest legal subdivision.'

"In a general sense, a subdivision of a township, such as a section, quarter section, lot, etc., which is authorized under the public-land laws; in a strict sense, a regular subdivision.

"A regular subdivision is defined as:

"Generally speaking, a subdivision of a section which is an aliquot part of 640 acres, such as a half section of 320 acres, quarter section of 160 acres, and quarter-quarter section of 40 acres.

"Finally, a smallest legal subdivision is defined as:

"For general purposes under the Public Land Laws, a quarter-quarter section.

"The interpretation of the 'smallest legal subdivision' as a quarter-quarter section follows a well-established principle. In Warren v. Van Brunt, 86 U.S. (19 Wallace) 646, 652 (1873), the Supreme Court stated that there is no legal subdivision of the public lands less than a quarter of a quarter section, or 40 acres, except in the case of fractional sections. State courts have similarly held that the smallest legal subdivision is a quarter-quarter section. Hopper v. Nation, 96 Pac. 77 (Kansas 1908), Greenblum v. Gregory, 294 Pac. 971 (Washington 1930). The Department has used this interpretation

> Although it is often said that a quarter-quarter section (or a lot) is the smallest legal subdivision, this does not mean that subdivisions of a quarter-quarter section are not considered "legal subdivisions" within the meaning of public land and mineral laws and regulations authorizing the leasing or other disposition of parcels of land less than 40 acres in size. However, if the subdivisions are based upon the principles of the rectangular public land survey system, the subdivisions must be designated in the same manner as that in which subdivisions are designated for larger subdivisions of a section, i.e., in terms of aliquot portions of the subdivisions. This may be easily done by following the survey principles for the large subdivisions of a section. If, however, an area of land is desired which is irregularly shaped, of disproportionate size, and otherwise not conformable to the regular square and rectangular subdivisions, it must be described by metes and bounds. An example of this would be a description excluding a right-of-way.

Appellant recognizes that it would be proper to reject a lease application with respect to lands smaller than a quarter-quarter section where other land within the quarter-quarter section remains available for leasing (Statement of reasons at 2, 4). See I Rocky Mountain Mineral Law Foundation, Law of Federal Oil and Gas Leases, § 5.7 (1967).

The State Office did not determine whether the land in the grant to the Metropolitan Water District was available for leasing. We note, however, that appellant applied for certain land within sec. 33, T. 1 N., R. 22 E., San Bernardino meridian, that partially overlapped with land included in the grant. The decision below did not exclude this land from appellant's lease. As it appears that the land was not available, it should have been excluded. 4/ We note that the decision below rejected appellant's

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fn. 3 (continued)
3/ in State of Arizona, 53 I.D. 149 (1930). See also Partial Assignments Under Section 30(a) of the Mineral Leasing Act, 76 I.D. 108 (1969)." However, perhaps it is noteworthy that 30 U.S.C. § 36 (1976) provides for the subdivision of 40-acre tracts into tracts of 10 acres or less in the location of placer mining claims.

4/ In Milan S. Papulak, 30 IBLA 77, 80 (1977), we held as follows:

"An oil and gas lease offer does not contain a defective land description requiring rejection of the offer merely because some of the land applied for is not available for leasing where the offeror has submitted advance rental for all of the land described. Arthur E. Meinhart, A-30665 (March 30, 1967); L. B. Smith, A-30447 (October 29, 1965); William B. Collister, [71 I.D. 124 (1964)]; Charles J. Babington, 71 I.D. 110 (1964). The general practice where a qualifying offer describes an entire section of land, an only part of that land is available for leasing, is to issue a lease as to the land that is available and reject the offer for the balance of the land in the section. William B. Collister, supra; see Charles J. Babington, supra. This is consistent with the intent of the lease offeror, as stated on the lease form, to lease any and all of the lands described which are available for lease. See John Oakason, 21 IBLA 185 (1975)."

application with respect to the E 1/2 SW 1/4 SE 1/4, SW 1/4 SW 1/4 SE 1/4 of sec. 33. This action was proper since the status plat indicates that land was available for leasing in the NW 1/4 SW 1/4 SE 1/4 for which appellant did not apply. The decision below, however, erred in including within the lease land which was not subject to leasing, and in rejecting appellant's application for other parcels smaller than the smallest legal subdivision when no other lands within those subdivisions were available for leasing.

Appellant's offer included lands in sec. 24 described as follows: "SW 1/4 SE 1/4 NW 1/4." Although the offer was platted as if it described "SW 1/4, SE 1/4 NW 1/4," the decision construed it as SW 1/4 SE 1/4 NW 1/4 and rejected it. The omission of the comma created an ambiguity which BLM was powerless to resolve in appellant's favor. See Duncan Miller, A-29791 (Dec. 11, 1963); see also Mountain Fuel Supply Co., 13 IBLA 85 (1973). However, since appellant has clarified his intention to apply for "SW 1/4, SE 1/4 NW 1/4," his offer for this land may be given priority as of December 22, 1981, the date his statement of reasons was filed. Duncan Miller, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed in part, affirmed in part, and remanded.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Gail M. Frazier
Administrative Judge